

wherein the weight ratio of (i) to (ii) is from about 5:1 to about 200:1 and the weight ratio of (i) to (iii) is from about 5:1 to about 50:1.

28. (amended)        The elastomer composition of Claim 23 comprising:

- (i)     a waterborne, anionically-stabilized [polymer] acrylic latex;
- (ii)    an acid-generating chemical; and
- (iii)   at least one cloud-point surfactant; [and]

wherein the weight ratio of (i) to (ii) is from about 5:1 to about 200:1 and the weight ratio of (i) to (iii) is from about 5:1 to about 200:1.

## RESPONSE

### Rejection under 35 USC 112

Claims 9-16 are rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. The rejection is essentially as follows:

"In Claims 9-16, it is not clear whether the textile composite itself is being claimed and the recitations of vehicle interiors, upholstery, etc. are statements of intended use or if Applicant intends to claim these structures, i.e., a vehicle interior comprising the textile composite, etc. Since no structure is set forth and since the claims read a textile composite 'for use in,' these limitations are being construed as statements of intended use."

Claims 9-14 and Claim 16 have been amended to clarify the intended scope of the invention. Claim 15 has been cancelled. Applicant now believes such claims to be in condition for allowance and requests the withdrawal of the rejection under 35 USC 112.

\* \* \*

Claims 28-29 are rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. The rejection is essentially as follows:

"Claim 28 depends on Claim 23. Claim 23 recites that the latex comprises an acrylic latex. Claim 28 recites a polymer latex. Therefore, the scope of claim 28 is not clear. Since Claim 28 is dependent upon Claim 23, Claim 28 incorporates all the limitations of Claim 23. However, Claim 28 recites a polymer latex and then includes weight ratios for the components of the elastomer composition. Thus, it is not clear if Claim 28 is limited to a composition comprising an acrylic latex with the weight ratios recited in Claim 28, or if Claim 28 is intended to encompass a polymer latex (not limited to acrylic latex) with the weight ratios. Therefore, Claims 28 and 29 are included in art rejections which are directed to embodiments drawn to a polymeric latex and to embodiments drawn to an acrylic latex."

Claim 28 has been amended to clarify the intended scope of the claim. It is believed that no amendment to Claim 29 is necessary to overcome the rejection under 35 USC 112. Therefore, Applicant respectfully requests the withdrawal of such rejection of Claims 28 and 29.

#### **Rejection under 35 USC 102**

Claims 17, 19-20, 21-22, and 28-29 are rejected under 35 USC 102(b) as being anticipated by Vogt et al. (US Patent 6,040,393). The rejection is essentially as follows:

"Vogt et al. disclose a fabric/elastomer composite comprising a textile fabric that has been coated with an elastomer composition wherein the composition comprises a water-borne polymeric latex, an acid-generating chemical, and a cloud point surfactant. The composition may be distributed throughout the fabric. See abstract. The fabric may be woven, knitted, or nonwoven and may comprise the claimed fiber blends. See column 5, lines 12-23. The fabric/elastomer composite may be made

by the method of applying the elastomer composition to the textile fabric and heating the composition. The composition may be applied by spraying, dipping, or other known methods. See column 5, lines 24-67."

The present application describes the use of an acrylic latex in the elastomer composition, rather than the polyurethane latex of the '393 patent. The '393 patent does not teach the use of an acrylic as the waterborne latex component. Accordingly, since the patent does not teach all the elements of the claims, Applicant believes the rejection to be improper and requests that it be withdrawn.

\* \* \*

Claim 30 is rejected under 35 USC 102(b) as being anticipated by Vogt (US Patent 5,916,636). The rejection is essentially as follows:

"Vogt discloses an elastomer coated textile fabric which may be used in automobile interiors. Vehicle interiors commonly reach temperatures of greater than 280 degrees F (see, for example, Burris, IV et al., US Patent 6,345,767 at column 1, lines 19-22). Therefore, the elastomer coated fabric of Vogt is exposed to temperatures greater than 130 degrees C."

Claim 30 has now been cancelled, making this rejection moot.

### **Rejection under 35 USC 103**

Claims 1-30 are rejected under 35 USC 103(a) as being unpatentable over Vogt et al. (US Patent 6,040,393) in view of Spek et al. (US Patent 4,886,702). The rejection is essentially as follows:

"Vogt et al. disclose a fabric/elastomer composite comprising a textile fabric that has been coated with an elastomer composition wherein the composition comprises a water-borne polymeric latex, an acid-generating chemical, and a cloud point surfactant. The composition may be distributed throughout the fabric. The fabric may be woven, knitted, or nonwoven and may comprise the claimed fiber blends. The

fabric/elastomer composite may be made by the method of applying the elastomer composition to the textile fabric and heating the composition. The composition may be applied by spraying, dipping, and other known methods.

"Vogt et al. differs from the claimed invention because Vogt et al. does not disclose the claimed uses of the fabric. However, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. In this case, since the Vogt et al. textile composite is capable of performing the intended uses, it meets the claim.

"Vogt et al. also differs from the claimed invention because Vogt et al. does not teach employing an acrylic latex but instead employs a polyurethane latex. Spek et al. teaches that both polyurethane and acrylic latex compositions may be used as textile coating materials wherein the latex coagulates at elevated temperature. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed an acrylic polymer instead of a polyurethane polymer as the polymer latex in Vogt et al. One of ordinary skill in the art at the time the invention was made would have been motivated to employ an acrylic polymer instead of a polyurethane polymer because both acrylic polymers and polyurethane polymers are known to be useful as elastomeric coatings for textiles as taught by Spek et al. and because both are known to be heat coagulable."

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference(s) must teach or suggest all the claim limitations. The

teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on the Applicant's disclosure.

The Office has suggested that substituting acrylic, which Spek et al. discloses to be coagulable, instead of the polyurethane latex of Vogt et al., would be obvious and would result in Applicant's invention. Applicant submits that there is no reasonable motivation to combine the references. The '393 patent teaches the need for a uniform dispersion of the elastomer composition (Col. 2, lines 56-58) while the '702 patent teaches away from a uniform dispersion. As described in Applicant's specification (page 2, line 25 – page 3, line 2), the Spek et al. patent creates a non-uniform dispersion due to the presence of acids and/or salts.

For this reason, Applicant believes the rejection to be improper and respectfully requests the withdrawal thereof.

### **CONCLUSION**

Having addressed the rejections set forth, Applicant now believes the application to be in condition for allowance. Withdrawal of the rejections and the issuance of a Formal Notice of Allowance is courteously solicited.

Respectfully submitted,

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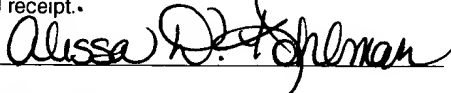


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### **CERTIFICATE OF MAILING**

I hereby certify that this Response is being deposited with the United States Postal Service as first class mail in an envelope addressed to The Commissioner for Patents, Washington, DC 20231, on December 20, 2002, along with a Request for Extension of Time and a duplicate thereof, and a postcard receipt.

Signed:



Name: Alissa D. Kohlman